



Randy Morton challenges the sufficiency of the evidence supporting his conviction of domestic battery as a Class A misdemeanor.<sup>1</sup> We affirm.

### **DISCUSSION AND DECISION**

Morton claims the evidence he battered Erica Mimms was insufficient to support his conviction.<sup>2</sup> We must affirm Morton’s conviction unless no reasonable fact-finder could have found the evidence proved his guilt beyond a reasonable doubt. *Winn v. State*, 748 N.E.2d 352, 357 (Ind. 2001). When making our determination, we must view the evidence and the inferences therefrom in the light most favorable to the verdict, and we may neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.*

Morton asserts we should, when conducting our sufficiency analysis, ignore Mimms’ testimony because it was incredibly dubious. Under the “incredible dubiousity” rule, an appellate court may, within narrow limits, impinge on the fact-finder’s role as judge of the credibility of witnesses. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002).

Our supreme court has explained:

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.

*Id.* (internal citations omitted).

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<sup>1</sup> “A person who knowingly or intentionally touches an individual who: . . . (3) has a child in common with the other person; in a rude, insolent, or angry manner that results in bodily injury to the person described in subsection . . . (3) commits domestic battery, a Class A misdemeanor.” Ind. Code § 35-42-2-1.3

<sup>2</sup> Morton does not challenge the court’s implicit finding he and Mimms have a son.

We may not apply the incredible dubiousity rule because Mimms' testimony was corroborated. Marion County Sheriff's Deputy Kenneth Radtke responded to the 911 call from Mimms' apartment at approximately 10:00 p.m. on September 16, 2004. He described Mimms as "very distraught" and reported she had "marks to her back and . . . her leg." (Tr. at 21.) Regarding what had transpired, he testified: "[I]t looked she had uh, she had been knocked down so probably the marks came from that and also um, the marks on her legs appeared to be scrapes and that (inaudible) also with the back the [sic] appeared to be scraping marks." (*Id.*)

Nor was Mimms' testimony "inherently improbable, or coerced, [or] equivocal." *Love*, 761 N.E.2d at 810. The events she described were not improbable. She was not equivocal about whether Morton battered her. Morton presented no evidence suggesting Mimms was coerced to testify or to fabricate such a story. In these circumstances we cannot apply the incredible dubiousity rule.

Mimms testified Morton called her on a Wednesday afternoon because he wanted to take their four-year-old son out of town that night for an upcoming family reunion. Mimms did not want their son to go because he would miss two days of school. Morton brought their son to Mimms' house about 9:45 p.m., presumably to leave him there. Instead Morton stormed up the stairs and began "snatching clothes out of our son's closet." (Tr. at 8.) When Mimms asked what he was doing, Morton said he was taking their son with him. Mimms expressed her desire that Morton not take their son, but Morton responded that "he was the father and . . . he basically had the right." (*Id.* at 9.) Morton took their son and the clothes to his car, and Mimms went outside to kiss her son

good-bye. She noticed her son did not have a coat or belt, so she ran inside to get them. When she went inside, Morton came to the front door. As she tried to walk past him to go back to the car, he pushed her down onto the steps. She fell on her left side, which left a “dent” on her side. (*Id.* at 11.) When she got up, he grabbed her ankles and pulled her legs out from under her, knocking her down again. She landed on her right buttocks, shoulder, and back, resulting in carpet burns and a scar on her back. He came toward her and she kicked him to try to get away, but he put his left hand around her neck and choked her, and he had his right hand in the air balled up in a fist to punch her. She kicked him again, managed to get free, and ran to her living room. He came to the living room, grabbed her by the neck and pinned her against a wall. When Mimms ripped the buttons off his shirt, he dropped her and left. Mimms immediately called the police. Because this evidence was sufficient to convict Morton, we affirm.

Affirmed.

RILEY, J., and BAILEY, J., concur.